IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3208 OF 1991

Radhakisan Harshanand and ors. ..Petitioners.

Vs.

Nathmal K. Lodhe and ors. ..Respondents.

Mr. Prafulla Shah for the Petitioner.

Mr.A.R. Kapadnis i/by M.V.Sali for Respondent Nos. 1 to 3.

Ms. V. Mhaisapurkar, AGP for the Respondent No.4.

CORAM : R.S. MOHITE,J.
DATED : 18.11.2005.

P.C.

1. By this writ petition, the petitioners impugn three judgments and orders of the authorities under the Tenancy Act who have concurrently held that they were non agriculturist on the date of an agreement of sale dated 7.5.1964 as also on the date of filing of the suit being civil suit No.160/1969 pending on the file of Civil Judge, S.D., Pune.

2. An Agreement of sale dated 7.5.1964 was executed by the father of the present respondents in favour of the petitioners and was in respect of land bearing Survey Nos.69/1 & 60/5(a) situated in Village Kothrud, Taluka

Haveli, District Pune. On 28.9.1970, the petitioners filed a suit for specific performance of the said agreement of sale. In the said suit, the trial court made a reference to the tenancy authorities in order to determine a issue as to "whether the plaintiffs were agriculturist". This issue was decided against the petitioners by all the three tenancy authorities. The said issue was finally decided by the Maharashtra Revenue Tribunal and while holding that the petitioners were not agriculturists, the Designated member also gave directions that the proceeding should be initiated for breach of law to see that the Government is not deprived of the suit land transferred in breach of Section 63 of the said Act.

3. I have heard both the sides. It is clear from the record that there is no challenge in the petition to the order of reference. The challenge is restricted only to the findings of the tenancy authorities and the directions to initiate the proceeding under Section 84B. The Advocate for the respondents has pointed out the judgment of this court in the case of **Abdul Rahim A. Kazi V.s. A.A. Kazi since deceased by his L.R.s J.A. Kazi and ors. reported in 2005(1) Mah. L.J. 108.** A Single Judge of this court in the said case has held that in a reference by the civil court to the tenancy

authorities, the petitioners who had participated in the tenancy proceeding cannot make a grievance that the reference was not properly formulated or that it was unwarranted. In view of this judgment, I do not feel that, it would be proper to recall the reference on the ground that the same was unwarranted because the present petitioners participated in the said proceedings.

4. The Advocate for the petitioner has brought to my notice judgment of this court in the case **Satvashile and ors. Vs. Rukmini D. Gath reported in 1979 Bom.C.R. 75.** A Single Judge of this court in the aforesaid case held that the civil court has the power to recall a reference once made to a tenancy court. It was also held by the Single Judge that the provisions of Section 63 of the Bombay Tenancy and Agricultural Lands Act,1948 only laid down a conditional restriction upon a transfer and that in a suit for specific performance of an agreement of sale, the issue whether plaintiff is an agriculturist on the date of agreement of sale was not relevant for a decision of the suit.

5. No doubt, the civil court has power to recall a reference. However, in the present case, there is no prayer for quashing the order of reference or for an order of recall and therefore, I am not inclined to go

into the validity of the reference. If the issue as to whether the plaintiffs are an agriculturist on the date of agreement of sale is not relevant for decision of the suit, then finding of the tenancy authorities on this issue cannot hurt the claim of the petitioners in the suit. It is open for them to make this argument and refer to the judgment of the Bombay High Court in case required before the trial court. As regards the directions given for initiating proceeding under Section 84B, it appears that the Designated Officer of M.R.T. Pune misguided himself. In the present case, there is no transfer at all and there is only an agreement of sale. In the circumstances, directions relating to the initiation of proceeding will have to be quashed. In the result, this petition is partly allowed and the directions given by the Designated Officer of M.R.T. Pune in the operative portion of the order dated 6.10.1988 to initiate proceeding for breach of Section 63 of the B.T.A.L.Act is quashed.

6. I am informed that the suit is of 1969. It is therefore, directed that the trial of the suit be expedited and as far as possible, the suit will be decided and disposed of within 8-months from the date of receipt of writ of this court. Rule made partly absolute accordingly. Petition stands disposed of.

(R.S. MOHITE, J.)